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Supreme Court, U.S.
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No. 10 - 227

In The

SUPREME COURT OF THE UNITED STATES

James D. Schneller,

Petitioner

v.

Prospect Park Nursing and Rehabilitation Center, Marjorie Zitomer; Richard Schneller; T. Sergeant Pepper, Esquire

Respondents

Petition For Writ Of Certiorari

REPLY BRIEF OF PETITIONER

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To the Honorable Justices of the Supreme Court:

Petitioner James D. Schneller, representing himself, replies to the response briefs of Marjorie Zitomer; Richard Schneller, & T. Sergeant Pepper, Esquire, and Herman McGill M.D..

I. REQUEST FOR CONSOLIDATION OR JOINT CONSIDERATION

Petitioner notes in section IV of the petition, a usefulness of consolidation of this petition with a concurrent petition filed the same month. That petition contains the same request. Third Circuit No. 09-4577 (Schneller v. Fox Subacute at Clara Burke), was filed with the clerk on July 1, 2010 and the latest reply filed on September 21, 2010.

Petitioner requests the Courts' attention to the fact that he has more fully argued the legal discussions, in the other petition, asking

incorporation into this petition.

The procedural difference between these cases is that, in this case, the District Court denied the motion to supplement the record, and the motion for Rule 11/28 U.S.C. §1927 sanction, in orders entered on September 4 and September 9, 2009, respectively. In Schneller v. Fox Subacute, now No. 10-120, the district Court denied both the motion to supplement the record, and the motion for Rule 11/28 U.S.C. §1927 sanction, in orders entered on the same day, September 9, 2009.

Therefore in Schneller v. Fox Subacute, the Third Circuit found it necessary to review plaintiff's claim of abuse of discretion in denial of the motion for sanctions, and affirmed, in what plaintiff claims is clear error.

Petitioner has written the clerk today, asking their assistance in any way possible of implementing abeyance of this case despite the fact that it has been distributed, pending the imminent distribution of No. 10 - 120, and requests the Court's action as deemed appropriate.

II. ARGUMENT

A. Herman McGill MD Waived His Right To Participation In This Petition

Herman McGill M.D. has waived his right to participate in this case because he chose to not participate in the proceedings in the lower Courts. This occurred despite the fact that Herman McGill M.D. and certain other non-diverse defendants were named as defendants in the opening paragraphs No. 10 to 14 of the complaint, in a subsection joining them in the event that federal question claims overwhelmed any need for diversity jurisdiction.

B. In Reply To Factual Claims Presented

Respondents claims as listed below are objected to as false:

P.1 - Claims of a "factual record" in support of respondents' arguments misrepresent that a

factual record of any sort exists. While plaintiff was careful to swear under penalty of perjury as to many of his pleadings, the district Court ultimately refused to hold hearing. It is plainly evident also that respondents attempt to rely on their prior factual claims made in their pleadings in the Courts below, despite the fact that they were not certified or attested to in any way, and despite the fact that plaintiff has raised a pervasive falsity in respondents' pleading, starting in the district Court.

P. 9 , 10 , 11 - Respondents' descriptions of the complaint as a "negligence" action are false, and attempt also to obscure the fact that the cases are federal question cases, start to finish.

P. 9 , 10 - Respondents, in footnotes to their counter statements of the case, state numerous inaccurate and misrepresenting facts regarding cases in Pennsylvania county courts. Although plaintiff has validly claimed that one reason the district Court has jurisdiction is because of an overt and voluminous denial of federal rights in state court decisions, the false claims in these footnotes show the proclivity of the respondents to

misrepresent. Furthermore, a showing is attempted to be made, that plaintiff is inept, or repetitively litigious, to which plaintiff responds that such is definitively not the case, that the petition, like the record, and like the record of petitioner's other cases in this Court, show that petitioner does not file suits in any manner other than soundly permitted by law.

Respondents' effort to show that "cases were dismissed" omits the fact that most of the cases are alive, often now accompanied by lawful efforts to transfer the within dismissed federal claims, which effort has coincided with an overall dead-ending of the cases through inaction or entry of hollow preliminary injunctions for the stated purpose of stopping "litigiousness" that was never proven. Respondent's claim of an "exhausting all remedies" omit the prevalent fact that appellate decisions are packed with absences of review on the majority of legal issues, and an inability of them to stand as law of the case or res judicata, even regarding cases lawfully re-filed.

Petitioner has also argued, among his many objections, that the state claims alleged to be non prossed or dismissed were not granted formal judgments of non pros, or were granted non pros as

to irrelevant parties, and voluminous additional aspects, of this nature, including lack of jurisdiction in some respects, causing the respondent's evaluations to be false, and showing lack of law of the case, and an apparent effort by the state courts to avoid overextending of what is an ongoing, shameful handling of the cases.[1] Extensive evidence in this regard, which also pertained to the State statute of limitations now claimed to be global, [2] was prevented in the district Court.

P. 10 (Herman McGill M.D.)

Respondent falsely states that petitioner "instead of filing an amended complaint" went about "instituting a new, yet identical lawsuit . . " Respondent has erred because this claim in reality pertains to the case now before the Court at 10 - 120, and is discussed in those pleadings.

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[1] Ministerial manipulativeness and obstruction is also claimed in substantial volume in those cases.

[2] Defendants and the trial Court likely sought to cause plaintiff the voluminous task of printing evidence to submit as affidavit submissions, but plaintiff, noting that defendant's purported defenses were lacking in documentary support, awaited hearing.

Respondents are omitting, regardless, the fact that petitioner filed prior to the one-year limitation of time under 42 Pa.C.S.§5535, which allows for re-filing of suits that have been dismissed for reasons other than dismissal on the merits.

P. 13 (Herman McGill M.D.), P. 22 (Remainder)

Petitioner replies that respondents' claims that diversity did not exist, omit in totality, as had the district Court, petitioner's timely, valid proposal to withdraw the case as to the nursing home, or any party deemed to be a Pennsylvania citizen, in order to cause diversity jurisdiction.

Herman McGill M.D. and other Pennsylvania citizens were named as optional defendants because the federal questions were so strong.

C. Reply Regarding Civil Rights and Timeliness

Defendants have stated a defense that petitioner's civil rights claims were insufficient as

a matter of law, most of which petitioner hopes to have anticipated sufficiently in his petition.

It is needful of adding that petitioner, in his trial court briefs in opposition to the motions to dismiss the complaint, of Prospect Park Nursing Center, and of Marjorie Zitomer, Richard Schneller, & T. Sergeant Pepper Esquire, claimed liability under color of law *and* state action for reasons including that private, individual conduct may be found to constitute state action (1) where state courts enforce agreement affecting private parties, (2) where state significantly involves itself with private party, or (3) where there is private performance of government function. Sament v. Hahnemann Medical College and Hospital of Philadelphia, 413 F.Supp. 434 (E.D.Pa.,1976) "at least when the state creates a system permitting private parties to substitute their judgment for that of a state official or body, a private actor's mere invocation of state power renders that [private] party's conduct actionable [as a joint actor with the state] under § 1983." Cruz v. Donnelly, 727 F.2d 79, 82 (3d Cir.1984). Plaintiffs claim that the system established under sections of Chapter 54 of Title 20 of the Pennsylvania Consolidates Statutes regarding

Advance Health Directives and Chapter 55 of Title 20 of the Pennsylvania Consolidates Statutes regarding Incapacitated Persons, along with appellate decisions in that arena, allow a physician, a hospital administrator, and/or a living will surrogate, in some combination, to substitute their judgment for that of a Pennsylvania Orphans Court, and therefore to perform government function, in matters of longevity of their patients' existence. Also, the Commonwealth by it's laws significantly involves itself with facilities, physicians, and surrogates, and furthermore, the Chester County Register of Wills had on December 31, 2001 enforced an agreement affecting private parties Marjorie C. Schneller, James D. Schneller, surrogate Marjorie Zitomer; power of attorney Richard Schneller, and in many respects their attorney, T. Sergeant Pepper Esquire, and his firm. The agreement provided for a three way administration of the estate of George H. Schneller, but carried with it numerous legal implications, none of them explained to the plaintiffs. Said agreement and the decree of letters which enforced it substantially caused the acts of private performance of government function, where the state had significantly

involved itself with private parties. This is an entwining with governmental policies and impregnating with a governmental character as to become state action within the Civil Rights Act. Klavan

Furthermore, federal law mandates that the rights of the disabled be preserved and facilitated. e.g. Dipietrae v. City of Philadelphia, 666 A.2d 1132 (Pa. Cmwlth. 1995). The complaint claims a cause of action for discrimination to disabled under Federal grants and programs pursuant to 29 U.S.C. § 794 et seq.

In a similar fashion, respondents omit any discussion or mention of plaintiffs' claim of equitable tolling in regard to the statute of limitations, and the district Court's refusal of hearing despite scheduling of argument, which was attended by all parties, and of considerable length.

Petitioner claimed numerous legal reasons for timeliness of the action. The fact that the district Court and the Third Circuit avoided many of them, including a request for application of all statute of

limitations issues on a defendant-by-defendant basis, does not absolve the respondents of accuracy in this Court.

III. CONCLUSION

Plaintiff regrets any appearance of an effort on his part to present contested issues of fact. The instant questions regarding ongoing false claims and affirming of motion for sanctions, cause this issue to be relevant. The objected-to fact that hearing was not held, assists.

Petitioner regrets any delay in filing this reply brief. Herman McGill M.D. filed his response brief 15 days late without leave of Court.

Petitioner was forced to consider, at length, whether the case would benefit from this reply, or whether the question was sufficiently present in the petition and response.

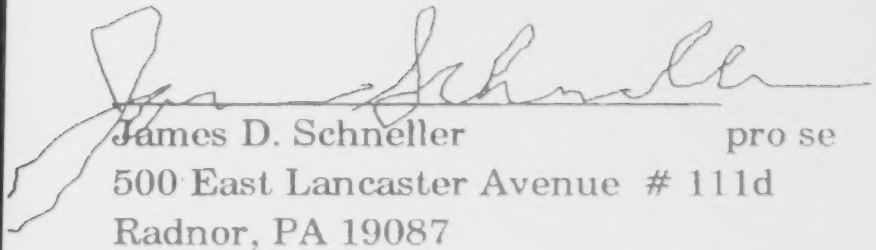
As stated in section I above, petitioner had anticipated that this and a related case would be distributed for the same conference, but then a group of respondents in No. 10 - 120 filed a late response brief, and the case was then distributed before plaintiff could write the Court to seek either formal or informal consolidation or some other implement. Meanwhile plaintiff was forced to litigate pro se in three ongoing election related suits because he is a candidate for office. The last of the replies filed solidified petitioner's concern that replies were necessary in both cases, and so he files this reply, having completed taking appeal from a decision entered two days ago in a complex election mandamus case.

WHEREFORE, petitioner James D. Schneller respectfully requests that certiorari be granted, or, in the alternative, that the decision of the Third Circuit Court of Appeals be reversed.

WHEREFORE, petitioner respectfully requests continuance of consideration of this case, despite the fact that it has been distributed, pending the

imminent distribution of No. 10 - 120, or the Court's alternative action as deemed appropriate.

WHEREFORE, petitioner respectfully requests vacating of judgment, and of any findings of lack of falseness and misrepresentation by defendants, and remand for order for hearing on all claims of false statements in this Court and the district court.



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Date: October 8, 2010